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NATIONAL LABOR RELATIONS BOARD

Analysis of FY 2011 Service Contract Inventories

AGENCY: National Labor Relations Board.

ACTION: Notice of Analysis of FY 2011 Service Contract Inventories.

BACKGROUND: The National Labor Relations Board (NLRB) is an independent Federal Agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between and among unions, employees, and employers in the private sector. The statute guarantees the right of employees to organize and bargain collectively with their employers or to refrain from all such activity. Generally applying to all employers involved in interstate commerce other than airlines, railroads, agriculture, and government, the Act implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. Through the years, Congress has amended the Act and the Board and courts have developed a body of law drawn from the statute. The NLRB consists of 51 regional, sub-regional, and resident offices, and a headquarters office.

SCOPE: Pursuant to the December 19, 2011 Memorandum from the Office of Federal Procurement Policy (OFPP), Federal agencies are requested to conduct an analysis of special interest functions within the FY 2011 Service Contract Inventories submitted to the Office of Management and Budget (OMB) in accordance with Section 743 of Division C of the FY 2011 Consolidated Appropriations Act, P.L. 111-117. The NLRB hereby submits its analysis and findings.

METHODOLOGY: The NLRB performed an analysis of the special interest functions by pulling information on all FY 2011 service contracts over \$25,000 from FPDS-NG with the

special interest Product Service Codes (PSC) selected from the Service Contract Summary. We decided on a sample of three (3) contracts that are representative of the NLRB service contract inventory which we believe provides an illustrative representation of the overall inventory of special interest contracts. This sample provides information about one (1) service contract from each of the two (2) PSC categories that make up the FY2011 NLRB inventory.

The contracts were analyzed by NLRB Contracting Officers by gathering information in cooperation with Contracting Officers Representative (COR) and Program Managers to determine whether the contract labor is used appropriately and efficiently and if the mix of Federal employees and contractors in the agency is effectively balanced. The analysis specifically addresses the desired outcomes in Section 743(e) of Division C of the FY 2011 Consolidated Appropriations Act, P.L. 111-117 to ensure that:

- (A) each contract in the inventory that is a personal services contract has been entered into, and is being performed, in accordance with applicable laws and regulations;
- (B) the agency is giving special management attention to functions that are closely associated with inherently governmental functions;
- (C) the agency is not using contractor employees to perform inherently governmental functions;
- (D) The agency has specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded during performance to become an inherently governmental function;
- (E) The agency is not using contractor employees to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations; and

(F) There are sufficient internal agency resources to manage and oversee contracts effectively.

OBSERVATIONS AND FINDINGS: The NLRB inventory consists of service contracts from three (3) PSC Category codes. The codes are:

- R407 OCIO Advisory Services;
- R408 Enterprise IT Helpdesk Support Services; and
- R704 Agency Audit Services.

R407 – The contract representing R407, obligated in the amount of \$47,320, is for Office of Computer Information Officer (OCIO) Advisory Services, and is the only contract listed under the R407 PSC code. Discussions with the OCIO reveal that the contract continues to be well-managed by the contractor and meets the scope and intent of the requirement to provide advisement information to the OCIO, and adheres to all applicable laws and regulations. The contract is not a personal services contract. The agency is not using contractor employees to perform inherently governmental functions. The advisement information provided by the contractor is typically beyond the intrinsic duties and knowledge of the government and the OCIO continues to provide management attention to ensure any functions that could be closely associated with inherently governmental functions do not surface. The COR is the Chief Information Officer who ensures that the contract does not change or expand services to become inherently governmental, the OCIO is monitoring the work and systems in place. The contractor did not perform critical functions that would affect the ability of the agency to maintain control of its mission and operations and is never on site. The contractor advises the OCIO, on trends in the government and industry and control is maintained by the government by managing it closely and effectively at all times.

R408 – The contract selected to represent PSC code R408 is the second largest contract in the largest PSC group of special interest service contracts obligated in the amount of \$1,588,851. This contract provides Enterprise IT Helpdesk Support Services for the NLRB. The services provided under this contract are not inherently governmental and although the performance of the contract is important, contractors were not being used to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations. The NLRB has given special management attention to performance of this contract, but no functions are thought to be closely associated with being inherently governmental, nor has changed or expanded, during performance, to become inherently governmental. The contract is monitored closely by a COR, the Supervisory Information Technology Specialist who understands the contract requirement and manages it to remain within the scope of the requirement. In addition, there are several OCIO (government) employees working closely with this contract, so there are sufficient internal resources to administer and oversee the contract effectively. The contractor has performed well and adhered to all laws and regulations.

R704 – The contract selected to represent PSC code R704 is for Audit Services from Carmichael, Brasher, Tuvell, and Company. This contract with a base year and four (4) one year options totals \$942,148. This contract was chosen as representative because it is also the only contract in this PSC category. This was a non-personal services contract that provided the NLRB with an independent financial audit. The contractor has performed well, and has adhered to laws and regulations, so there are no concerns about poor performance. The contract is not a personal services contract, nor was it ever inherently governmental, and has been monitored to ensure that no employees of the contractor were performing inherently governmental tasks or responsibilities. The agency is not using contractor employees to perform critical functions in

such a way that could affect the ability of the agency to maintain control of its mission and operations. The contract is monitored closely by a COR and other program staff, so there are sufficient internal resources dedicated to oversee the contract effectively.

SUMMARY: It has been determined that none of the service contractors within the special interest contracts have been considered to have performed poorly. The costs of the contracts analyzed were not excessively priced and did not present excessive risks to the government. The NLRB takes pride in monitoring service contracts closely with full cooperation from Contracting Officers, CORs, and Program Staff and Managers. Based on this analysis, we believe we have a balanced mix of contractors to employees and have the resources necessary to continue monitoring contracts effectively and efficiently to reduce risks of personal or inherently governmental contracts. The NLRB is committed to identifying and addressing any new risks related to service contracts, and will meet the challenges with swift and evasive action.

FOR FURTHER INFORMATION CONTACT: Questions regarding the analysis of the FY 2011 service contract inventories should be directed to Doug Wolf in the Acquisitions Management Branch at 202-273-4218 or doug.wolf@nlrb.gov.

Dated, February 22, 2013

By Direction of the Board.

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Solicitor

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